

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

VENETTA A. OUTLEY,)
Plaintiff,)
v.) Case No. 15 C 7817
CAROLYN W. COLVIN, Acting)
Commissioner of Social Security,)
Defendant.)

MEMORANDUM ORDER

It has come to this Court's attention that the Social Security Administration ("SSA") has rescinded its long-standing guidance as to credibility determinations contained in Social Security Ruling ("SSR") 96-7p, 61 Fed. Reg. 34483, 1996 WL 374186 (Jul. 2, 1996), replacing it with SSR 16-3p, 81 Fed. Reg. 14166, 2016 WL 1119029 (Mar. 16, 2016), which expressly eschews the use of the word "credibility." While plaintiff's opening memorandum was submitted a scant three business days after SSR 16-3p appeared in the Federal Register -- so that counsel's failure to mention what effect it might have is certainly understandable -- neither side's subsequent memorandum, respectively filed some two and three months later, addressed the change.¹

But because plaintiff's argument for setting aside the Administrative Law Judge's decision (the "Decision") rests in part on the latter's failure to follow SSR 96-7p in determining whether to credit her symptoms, further input is called for on two related questions:

¹ It is puzzling that internal communication within the government would not have alerted SSA's counsel to the impending change or to its later promulgation.

1. Should the Decision be reviewed for compliance with SSR 16-3p rather than with SSR 96-7p (a question as to whether the new SSR should be viewed as retroactive).
2. If SSR 16-3p is indeed applicable to this case, do its differences from SSR 96-7p make any material difference in assessing whether the Decision complied with SSA regulations?

This Court accordingly orders a status hearing to be held at 9 a.m. July 14, 2016 to discuss those issues.



Milton I. Shadur
Senior United States District Judge

Date: July 7, 2016